

1  
2  
3 UNITED STATES DISTRICT COURT  
4 EASTERN DISTRICT OF WASHINGTON  
5 AT RICHLAND

6  
7  
8  
9 In re IsoRay, Inc. Securities Litigation  
10  
11  
12  
13

Master File No. 4:15-cv-5046-LRS

ORDER PRELIMINARILY  
APPROVING SETTLEMENT AND  
PROVIDING FOR NOTICE  
PROCEDURES

CLASS ACTION

14 WHEREAS (i) Lead Plaintiffs Bodgan Ostrowski, Joseph Kavanaugh, and  
15 Patrick McNamara and named plaintiffs Timothy Yuen and JM Zulueta  
16 (“Plaintiffs”), on behalf of themselves and the putative Settlement Class, and (ii)  
17 Defendants IsoRay, Inc. (“IsoRay”), and Dwight Babcock (collectively,  
18 “Defendants”) have jointly entered, by and through their respective counsel, into a  
19 Settlement of the claims asserted in the Litigation, the terms of which are set forth  
20 in a Stipulation of Settlement, dated September 23, 2016 (the “Stipulation”).

21 WHEREAS, the Stipulation, which is subject to review under Rule 23 of the  
22 Federal Rules of Civil Procedure and which, together with the exhibits thereto, sets  
23 forth the terms and conditions for the proposed Settlement of the claims alleged in  
24 the Amended Complaint for Violations of the Federal Securities Laws (the

1 “Complaint”) filed in the Litigation; and the Court having read and considered the  
2 Stipulation, the proposed “Notice of Pendency and Proposed Settlement of Class  
3 Action” (“Notice”), the proposed “Summary Notice of Pendency and Proposed  
4 Class Action Settlement” (“Summary Notice”), the proposed Plan of Allocation of  
5 the Net Settlement Fund among Settlement Class Members (“Plan of Allocation”),  
6 the proposed form of the Proof of Claim and Release (“Proof of Claim”), the  
7 proposed form of Order and Final Judgment, and submissions made relating thereto,  
8 and finding that substantial and sufficient grounds exist for entering this Order;

9 NOW, THEREFORE, IT IS HEREBY ORDERED, this 20th day of October,  
10 2016, that:

11 1. Capitalized terms used herein have the meanings defined in the  
12 Stipulation. Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil  
13 Procedure, and for the purposes of the Settlement only, claims in the Litigation  
14 against Defendants are hereby preliminarily certified as a class action on behalf of  
15 all Persons (including, without limitation, their beneficiaries) who purchased the  
16 publicly traded common stock of IsoRay between May 20, 2015 and May 21, 2015,  
17 inclusive, (“Class Period”) and were damaged thereby. Excluded from the  
18 Settlement Class are (i) Persons who suffered no compensable losses, (ii) Opt-Outs  
19 (*i.e.*, those Persons who file a valid and timely request for exclusion in accordance  
20 with this Order); and (iii) Defendants and any entity in which the Defendants have  
21 a controlling interest, and the officers, directors, affiliates, legal representatives,  
22 immediate family members, heirs, successors, subsidiaries and/or assigns of any  
23 such individual or entity in their capacity as such.

2. This Court finds, preliminarily and for purposes of Settlement only, that the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number of Settlement Class Members is so numerous that joinder of all members of the Settlement Class is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of the Plaintiffs are typical of the claims of the Settlement Class they seek to represent; (d) the Plaintiffs will fairly and adequately represent the interests of the Settlement Class; (e) the questions of law and fact common to the Settlement Class predominate over any questions affecting only individual members of the Settlement Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, preliminarily and for the purposes of settlement only, Lead and named Plaintiffs are certified as the class representatives on behalf of the Settlement Class and the Co-Lead Counsel previously selected by Lead Plaintiffs and appointed by the Court, is hereby appointed as Co-Lead Counsel for the Settlement Class.

4. A hearing (the "Final Settlement Hearing") pursuant to Federal Rule of Civil Procedure 23(e) is hereby scheduled to be held before the Court on March 7, 2017 at 10:30 a.m. for the following purposes:

(a) to finally determine whether the Litigation satisfies the applicable prerequisites for class action treatment under Federal Rules of Civil Procedure 23(a) and (b);

(b) to finally determine whether the Settlement is fair, reasonable, and adequate, and should be approved by the Court;

(c) to finally determine whether the Order and Final Judgment as provided under the Stipulation should be entered, dismissing the Complaint on the merits and with prejudice, and to determine whether the release by the Settlement Class of the Released Persons of the Released Claims as set forth in the Stipulation, should be ordered, along with a permanent injunction barring efforts to bring any claims extinguished by the release;

(d) to finally determine whether the proposed Plan of Allocation for the distribution of the Net Settlement Fund is fair and reasonable and should be approved by the Court;

(e) to consider the application of Plaintiffs' Counsel for an award of attorneys' fees and expenses and an award to Plaintiffs;

(f) to consider any Settlement Class Members' objections to the Settlement, whether submitted previously in writing or presented orally at the Final Settlement Hearing by Settlement Class Members (or by counsel on their behalf); and

(g) to rule upon such other matters as the Court may deem appropriate.

5. The Court reserves the right to adjourn the Final Settlement Hearing to a later date and to approve the Settlement with or without modification and with or without further notice of any kind. The Court further reserves the right to enter its Order and Final Judgment approving the Settlement and dismissing the Complaint, on the merits and with prejudice, regardless of whether it has approved the Plan of Allocation or awarded attorneys' fees and expenses or award to the Plaintiffs.

1           6.     The Court reserves the right to approve the Settlement with such  
2 modifications as may be agreed upon or consented to by the Settling Parties and  
3 without further notice to the Settlement Class where to do so would not impair  
4 Settlement Class Members' rights in a manner inconsistent with Rule 23 and due  
5 process of law.

6           7.     The Court approves the form, substance and requirements of (a) the  
7 Notice; (b) the Summary Notice; and (c) the Proof of Claim, all of which are  
8 exhibits to the Stipulation.

9           8.     Plaintiffs' Counsel has the authority to enter into the Stipulation on  
10 behalf of the Settlement Class and is authorized to act on behalf of the Settlement  
11 Class Members with respect to all acts or consents required by or that may be given  
12 pursuant to the Stipulation or such other acts that are reasonably necessary to  
13 consummate the Settlement.

14          9.     Strategic Claims Services is approved as the Claims Administrator for  
15 the Settlement.

16          10.    Plaintiffs' Counsel, through the Claims Administrator, shall cause the  
17 Notice and the Proof of Claim, substantially in the forms annexed hereto, to be  
18 mailed, by first class mail, postage prepaid, within twenty-eight (28) calendar days  
19 of the entry of this Order, to all Class Members who can be identified with  
20 reasonable effort by the Claims Administrator.

21          11.    Plaintiffs' Counsel are authorized to disburse up to \$100,000 (one  
22 hundred thousand dollars) for Administrative Costs (as defined in the Stipulation),  
23 to be used for reasonable out-of-pocket costs in connection with providing notice  
24 of the Settlement to the Settlement Class and for other reasonable out-of-pocket

1 administrative expenses. After the Effective Date, additional amounts may be  
2 disbursed for Administrative Costs, if any.

3 12. Defendants and any and all issuers, securities firms, or transfer agents  
4 holding transfer records which indicate the legal owners of IsoRay common stock  
5 currently or during the Class Period are hereby ordered to produce such transfer  
6 records in a usable electronic format to Plaintiffs' Counsel or the Claims  
7 Administrator within fourteen (14) calendar days of receipt of a copy of this Order.

8 13. Plaintiffs' Counsel, through the Claims Administrator, shall also make  
9 all reasonable efforts to give notice to nominee owners such as brokerage firms and  
10 other persons or entities who purchased IsoRay common stock during the Class  
11 Period. Such nominee purchasers are directed to forward copies of the Notice and  
12 Proof of Claim to their beneficial owners or to provide the Claims Administrator  
13 with lists of the names and addresses of the beneficial owners and the Claims  
14 Administrator is ordered to send the Notice and Proof of Claim promptly to such  
15 beneficial owners. Additional copies of the Notice shall be made available to any  
16 record holder requesting same for the purpose of distribution to beneficial owners,  
17 and such record holders shall be reimbursed from the Settlement Fund, upon receipt  
18 by the Claims Administrator of such request and proper documentation, for the  
19 reasonable expense of sending the Notice and Proof of Claim to beneficial owners.

20 14. Plaintiffs' Counsel shall, at or before the Final Settlement Hearing,  
21 serve upon Defendants' Counsel, and file with the Court, proof of mailing of the  
22 Notice and Proof of Claim, both to Settlement Class Members and to nominees.

23 15. Plaintiffs' Counsel, through the Claims Administrator, shall cause the  
24 Summary Notice to be published electronically once on *GlobeNewswire* and in print

once in the *Investor's Business Daily* within ten (10) calendar days after the entry of this Order. Plaintiffs' Counsel shall, at or before the Final Settlement Hearing, file with the Court proof of publication of the Summary Notice.

16. The forms and methods set forth herein of notifying the Settlement Class of the Settlement and its terms and conditions meet the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the Exchange Act, 15 U.S.C. § 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995; constitute the best notice practicable under the circumstances; and constitute due and sufficient notice to all persons and entities entitled thereto. No Settlement Class Member will be relieved from the terms of the Settlement, including the releases provided for therein, based upon the contention or proof that such Settlement Class Member failed to receive actual or adequate notice.

17. In order to be entitled to participate in recovery from the Net Settlement Fund after the Effective Date, each Settlement Class Member shall take the following action and be subject to the following conditions:

(a) A properly completed and executed Proof of Claim must be submitted to the Claims Administrator, at the Post Office Box indicated in the Notice, postmarked no later than seventy-five (75) calendar days from the date of this order. Such deadline may be further extended by Order of the Court. Each Proof of Claim shall be deemed to have been submitted when legibly postmarked (if properly addressed and mailed by first-class mail) provided such Proof of Claim is actually received before the filing of a motion for an Order of the Court approving distribution of the Net Settlement

1 Fund. Any Proof of Claim submitted in any other manner shall be deemed  
2 to have been submitted when it was actually received by the Administrator at  
3 the address designated in the Notice.

4 (b) The Proof of Claim submitted by each Settlement Class Member  
5 must satisfy the following conditions: (i) it must be properly filled out,  
6 signed and submitted in a timely manner in accordance with the provisions  
7 of the preceding subparagraph; (ii) it must be accompanied by adequate  
8 supporting documentation for the transactions reported therein, in the form  
9 of broker confirmation slips, broker account statements, an authorized  
10 statement from the broker containing the transactional information found in  
11 a broker confirmation slip, or such other documentation as is deemed  
12 adequate by the Claims Administrator or Plaintiffs' Counsel; (iii) if the  
13 Person executing the Proof of Claim is acting in a representative capacity, a  
14 certification of his current authority to act on behalf of the Settlement Class  
15 Member must be provided with the Proof of Claim; and (iv) the Proof of  
16 Claim must be complete and contain no material deletions or modifications  
17 of any of the printed matter contained therein and must be signed under  
18 penalty of perjury.

19 (c) Once the Claims Administrator has considered a timely-  
20 submitted Proof of Claim, it shall determine whether such claim is valid,  
21 deficient or rejected. For each claim determined to be either deficient or  
22 rejected, the Claims Administrator shall send a deficiency letter or rejection  
23 letter as appropriate, describing the basis on which the claim was so  
24 determined. Persons who timely submit a Proof of Claim that is deficient or



1 otherwise rejected shall be afforded a reasonable time (at least seven (7)  
2 calendar days) to cure such deficiency if it shall appear that such deficiency  
3 may be cured.

4 (d) For the filing of and all determinations concerning their Proof  
5 of Claim, each Settlement Class Member shall submit to the jurisdiction of  
6 the Court.

7 18. All Settlement Class Members who do not submit valid and timely  
8 Proofs of Claim will be forever barred from receiving any payments from the Net  
9 Settlement Fund, but will in all other respects be subject to and bound by the  
10 provisions of the Stipulation and the Order and Final Judgment, if entered.

11 19. Settlement Class Members shall be bound by all determinations and  
12 judgments in the Litigation, whether favorable or unfavorable, unless such Persons  
13 request exclusion from the Settlement Class in a timely and proper manner, as  
14 hereinafter provided. A Settlement Class Member wishing to make such request  
15 shall mail it, in written form, by first class mail, postage prepaid, or otherwise  
16 deliver it, so that it is postmarked no later than thirty (30) calendar days prior to the  
17 Final Settlement Hearing or February 4, 2017, to the addresses listed in the Notice.  
18 Such request for exclusion shall clearly indicate the name and address and phone  
19 number and e-mail contact information (if any) of the Person seeking exclusion,  
20 state that the sender specifically requests to be excluded from the Settlement Class,  
21 and must be signed by such person. Such Persons requesting exclusion are also  
22 required to specify all their purchases and sales of IsoRay common stock during the  
23 Class Period, including the date, number of shares and price of the shares purchased  
24 or sold and include account documentation substantiating such purchases and sales.

1 The request for exclusion shall not be effective unless it provides the required  
2 information, is legible, and is made within the time stated above, or the exclusion  
3 is otherwise accepted by the Court. Plaintiffs' Counsel may contact any person or  
4 entity filing a request for exclusion, or their attorney if one is designated, to discuss  
5 the exclusion.

6 20. Settlement Class Members requesting exclusion from the Settlement  
7 Class shall not be entitled to receive any payment out of the Net Settlement Fund.

8 21. The Court will consider objections to the Settlement, the Plan of  
9 Allocation, or the application for attorneys' fees and expenses and any payment to  
10 Lead Plaintiff, only if such objections and any supporting papers are served to be  
11 received at least twenty (20) calendar days prior to the Final Settlement Hearing,  
12 upon each of the following:

13 PLAINTIFFS' COUNSEL:

14 Phillip Kim  
15 THE ROSEN LAW FIRM, P.A.  
16 275 Madison Avenue 34th Floor  
17 New York, NY 10016

18 -or-

19 Matthew M. Guiney  
20 WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP  
21 270 Madison Avenue  
22 New York, NY 10016

23 -and-

1 DEFENDANTS' COUNSEL:

2 Gregory L. Watts  
3 WILSON SONSINI GOODRICH & ROSATI, P.C.  
4 701 Fifth Avenue, Suite 5100  
5 Seattle, WA 98104-7036

6 and the objector has (by that same date) filed said objections, papers and briefs,  
7 showing due proof of service upon counsel identified above, with the Clerk of the  
8 Court, U.S. District Court, Eastern District of Washington, P.O. Box 2706, Yakima,  
9 WA 98907. Attendance at the Final Settlement Hearing is not necessary but persons  
10 wishing to be heard orally in support of or opposition to the Settlement, the Plan of  
11 Allocation, and/or the application for attorneys' fees and expenses or award to Lead  
12 Plaintiffs are required to indicate in their written objection or in a separate writing  
13 that is submitted in accordance with the deadline (and if to contest the Settlement,  
14 after instruction pertinent to the submission of a written objection), that they intend  
15 to appear at the Final Settlement Hearing and identify any witnesses they may call  
16 to testify or exhibits they intend to introduce into evidence at the Final Settlement  
17 Hearing. Settlement Class Members do not need to appear at the Final Settlement  
18 Hearing or take any other action to indicate their approval.

19 22. Any Settlement Class Member who does not object in the manner  
20 prescribed above shall be deemed to have waived all such objections and shall  
21 forever be foreclosed from making any objection to the fairness, adequacy or  
22 reasonableness of the Settlement, the Order and Final Judgment to be entered  
23 approving the Settlement, the Plan of Allocation, or the application for an award of  
24 attorneys' fees and expenses and award to Plaintiffs.

1           23. The Court reserves the right to adjourn the Final Settlement Hearing  
2 or any adjournment thereof without any further notice other than entry of an Order  
3 on the Court's docket, and to approve the Settlement without further notice to the  
4 Settlement Class.

5           24. All papers in support of the Settlement, the Plan of Allocation and any  
6 application for attorneys' fees or expenses or award to Lead Plaintiffs shall be filed  
7 and served thirty-five (35) calendar days before the Final Settlement Hearing.

8           25. Any submissions filed in response to any objections or in further  
9 support of the Settlement, the Plan of Allocation and any application for attorneys'  
10 fees or expenses or a payment to Lead Plaintiffs shall be filed no later than fourteen  
11 (14) calendar days prior to the Final Settlement Hearing.

12           26. Pending final determination of whether the Settlement should be  
13 approved, all Settlement Class Members, and each of them, and anyone acting or  
14 purporting to act for any of them, shall be enjoined from prosecuting, attempting to  
15 prosecute, or assisting others in the prosecution of, any Released Claims. In  
16 addition, the Litigation is stayed.

17           27. In the event the Settlement is not consummated pursuant to its terms,  
18 the Stipulation, except as otherwise provided therein, including any amendment(s)  
19 thereto, and this Order, shall be null and void, of no further force or effect, and  
20 without prejudice to any Settling Party, and may not be introduced as evidence or  
21 referred to in any action or proceedings by any person or entity, and each party shall  
22 be restored to his, her or its respective position as it existed before September 14,  
23 2016, pursuant to the terms of the Stipulation.

7  
8 **IT IS SO ORDERED.**  
9 Dated: October 20, 2016.

0  
1  
2

*s/Lonny R. Suko*

---

LONNY R. SUKO  
SENIOR U. S. DISTRICT COURT JUDGE

2 LONNY R. SUKO  
SENIOR U. S. DISTRICT COURT JUDGE

2

LEONNY R. SOTO  
SENIOR U. S. DISTRICT COURT JUDGE